IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2530 OF 2006

The State of Maharashtra ..Applicant

Versus

Prashant Sashikant Joshi & 4 ors...Respondents

Smt.P.H.Kantharia, APP for the applicant/State.

Mr.Sandeep S.Salunkhe for respondent nos.1 to 5.

Coram : J.N.Patel &
R.S.Mohite,JJ

Date : 11.01.2007.

PC

1. Heard the Learned APP for the State and the learned Advocate for respondent nos.1 to 5.

2. This is an application seeking leave to prefer an appeal against the Judgment and order dated 27.1.2006 passed by the learned District & Sessions Judge, Solapur in Sessions Case No.20/2005 wherein he acquitted the accused persons for the offences punishable under Sections 498-A, 304(B), 323 and 504 read with Section 34 of IPC.

3. It was the prosecution case that Bhagyeshri Joshi who was married to Prashant Shashikant Joshi was treated with cruelty and came to be murdered by the respondents/original accused by administering

her poison used for killing rats. The trial Court after analysing the evidence on record, found that in so far as Bhagayshree is concerned, it is not in dispute that she died out of consuming poison but the prosecution has failed to establish that it was the accused who were responsible for it. In the course of trial, on behalf of the defence, medical officers were examined to show that deceased Bhagayshree was suffering from mental ill-ness for which she was treated and therefore, considering the evidence as a whole, acquitted the accused persons of all the charges.

4. The learned APP submitted that the trial Court has failed to take into consideration the evidence on record that victim was treated with cruelty by her husband and in-laws and that she died an un-natural death due to consumption of poison within a period of 7 years of her marriage. Therefore, it is contended that factum of cruel treatment in order to force to bring dowry and resulted in un-natural death by consumption of poison while she was in custody of the accused persons sufficiently goes to establish that the appellant accused were responsible for having committed the offence.

5. The learned APP has drawn our attention to the evidence on record in support of her contention.

6. We have examined the case and find that the trial Court has taken into consideration the conduct of the accused persons and the fact that though the victim was conscious and alive from the point of time she consumed poison and till she died she has not made any statement implicating the accused persons. On the other hand, Dr.Sunil Pandharinath Hogade who attended to her on 29.4.2004 stated that when she was brought to the hospital at 2.30 A.M. by her inlaws, she gave history of consumption of poison i.e. black coloured rat killing poison two teaspoons and vomitted three times before admission in the hospital. The patient was in conscious condition. Dr.has immediately reported the matter to the police but then though she was conscious and in a condition to speak, dying declaration was not recorded and therefore, for want of any evidence on record to show that the accused persons or any one of them responsible for administering poison, they cannot be held guilty for having committed offence under Section 304-B. Further allegation against the accused persons i.e. demand of dowry also did not inspire the confidence of trial Court and rightly so. The trial Court has taken into consideration that the victim was suffering from mental ill-ness. Therefore, in our view, the trial

Court was justified in holding that the prosecution has failed to prove that it is the respondents accused who were committed the offence for which they were prosecuted. Therefore, in the facts and circumstances of the case, we are not inclined to grant leave in the matter. Application is therefore, rejected. As a consequence of which, Criminal Appeal preferred by the State against acquittal stands dismissed.

(J.N.Patel,J)

(R.S.Mohite,J)